

**Pursuant to Ind.Appellate Rule 65(D),  
this Memorandum Decision shall not be  
regarded as precedent or cited before  
any court except for the purpose of  
establishing the defense of res judicata,  
collateral estoppel, or the law of the case.**

ATTORNEY FOR APPELLANT:

**RALPH E. SIPES**  
Anderson, Indiana

ATTORNEYS FOR APPELLEES:

**JARRELL B. HAMMOND**  
**ANTHONY M. ELEFThERI**  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

IN THE MATTER OF THE ESTATE OF )  
HARRY L. DUNN, Deceased, )

STAR WEALTH MANAGEMENT, )  
as Personal Representative, )

Appellant-Respondent, )

vs. )

RANDY L. DUNN; MICHELLE L. KING; )  
and ANTHONY K. DUNN, )

Appellees-Plaintiffs. )

No. 48A05-0610-CV-554

---

APPEAL FROM THE MADISON CIRCUIT COURT  
The Honorable Fredrick R. Spencer, Judge  
Cause No. 48C01-0307-ES-155

---

**NOVEMBER 16, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**HOFFMAN, Senior Judge**

Appellant-Personal Representative Star Wealth Management (a/k/a Star Financial Bank) (“Star Bank”), as personal representative for the supervised Estate of Harry L. Dunn (“the Estate”), appeals the trial court’s order—entered following a hearing on the Appellees-Heirs’ objection to Star Bank’s payment of \$20,600 in personal representative fees and \$20,600 in attorney fees without prior court approval—that determined that the reasonable value for personal representative fees was \$2,500 and the reasonable value for attorney fees was \$5,000, ordered the personal representative and his attorney to reimburse the remainder of the fee to the Estate, and ordered the personal representative to distribute certain commercial property to the Heirs. We affirm.

Star Bank raises two issues, which we restate as:

- I. Whether the trial court abused its discretion in its determination of fees for the Estate’s personal representative and attorney; and
- II. Whether the trial court erred by allowing the Heirs to keep the rental income collected from the commercial property for the period prior to the trial court’s order to distribute the commercial property to the Heirs.

Harry Dunn (“Dunn”) died testate on July 15, 2003. In July 1991, Dunn had executed his last will and testament, which was prepared by attorney Robert Austin from the law firm of Busby Austin Cooper & Farr. Generally, Dunn’s will provided that each of his three children, Randall Dunn (“Randy”), Anthony Dunn (“Anthony”), and Michelle King (“Michelle”) (collectively, “the Heirs”), would receive a one-third interest in his Estate. In his will, Dunn designated Star Bank as the personal representative for the Estate.

On August 26, 2003, Star Bank—through its Senior Vice President and Trust Officer, Thomas Cassidy—filed a petition to probate Dunn’s will. The trial court appointed Star Bank as the personal representative for the Estate, and Austin served as attorney for the Estate. The primary assets of the Estate included: (1) a commercial property, which was leased to two tenants and generated a monthly income; (2) Dunn’s residential property; (3) sixty-four shares of stock in a family business known as Lee Dunn & Sons; (4) bank accounts, one of which Dunn and Randy opened at 1<sup>st</sup> National Bank, a predecessor to Star Bank, in November 1988 and owned jointly (“joint bank account”); and (5) two automobiles (a truck and a car). All the property was located in Madison County.

On October 2, 2003, Cassidy and Austin met with the Heirs to discuss the administration of the Estate. During this meeting, Cassidy told the Heirs that his fee as the personal representative would be a flat fee of \$2,500. Austin did not discuss his fee with the Heirs. The Heirs agreed to sell Dunn’s residential property to Michelle’s son for \$90,000. Sometime prior to that meeting, Randy had already sold Dunn’s truck, and the Heirs agreed that Randy should also sell Dunn’s car.

The commercial property was not sold and was to be divided among the Heirs. Prior to Dunn’s death, Randy maintained the commercial property and collected the monthly rents from the two commercial tenants—Guide Corporation and Two Men and a Truck—in exchange for thirty percent of the rent collected from Guide and fifty percent of the rent collected from Two Men and a Truck. The Heirs ultimately agreed to continue this arrangement to have Randy collect the rents in exchange for a percentage of

the rents, and Austin drafted two written agreements regarding the Heirs' agreement. Thereafter, Randy collected the monthly rent from the commercial tenants and turned it over to Cassidy at Star Bank.

During the administration of the Estate, there was disagreement between Randy and Cassidy and Austin regarding whether the joint bank account was supposed to be distributed to Randy or whether it was a business account that was to be made part of the Estate. Apparently, there was also some initial questioning by Anthony and Michelle regarding the bank account; however, the Heirs ultimately agreed that the joint bank account should be distributed to Randy.

No claims were made against the Estate. In Spring 2004, Star Bank sold Dunn's residential property to Michelle's son pursuant to the Heirs' agreement, and Star Bank did not have to obtain a realtor. The Heirs also set the value of the sixty-four shares of stock, and following the claims period, Star Bank distributed those to the Heirs during the administration of the Estate.

On November 19, 2004, Star Bank filed a final accounting and sought authority to distribute the balance of the Estate. The final accounting estimated the gross value of the Estate for inheritance tax purposes was \$413,306. The final accounting revealed that on August 11, 2004, Star Bank had paid itself \$20,600 in personal representative fees and had paid Austin's law firm \$20,600 in attorney fees. The final accounting also revealed that Star Bank included the joint bank account as an Estate asset.

Thereafter, Randy sent Austin a letter, in which he attempted to resolve the issue regarding the joint bank account without having to file an objection. On December 28,

2004, Randy filed an objection to the final accounting and contested the inclusion of the joint bank account as an Estate asset.

After the Heirs received the final accounting, they were also concerned about the personal representative and attorney fees that had been paid. On January 1, 2005, the Heirs formed a limited liability company, Parkside Facilities, LLC (“the Heirs’ LLC”), and started to deposit the monthly rental income from the commercial property into the LLC’s bank account. In March 2005, the Heirs sent Cassidy a letter, in which they requested that he pay Randy the money from the joint bank account and questioned how the personal representative and attorney fees were calculated. Then, on September 30, 2005, Randy, joined by Anthony and Michelle, filed an amendment to Randy’s December 2004 objection to the final accounting. In this amended objection, the Heirs renewed the objection to the inclusion of the joint bank account as an Estate asset and also objected to the \$20,600 personal representative fees and \$20,600 attorney fees paid by Star Bank as being excessive and not reasonable.

On October 18, 2005, the trial court held a hearing on the Heirs’ two objections to the final accounting. The hearing was presided over by Judge Frederick Spencer. During the hearing, the parties entered into a settlement regarding the Heirs’ objection to the joint bank account and submitted a CCS entry memorializing their agreement that Randy would get the funds—specifically, \$36,136.58—from the joint bank account. The Heirs’ objection regarding the personal representative and attorney fees remained disputed and was reset for a hearing.

On December 15, 2005, the trial court held a hearing on the Heirs' objection to the personal representative and attorney fees. This hearing was presided over by the trial court's commissioner, Joseph Kilmer. During the hearing, Star Bank filed a motion for leave to withdraw and amend the final accounting, in which it sought, among other things, an order directing Randy to pay over the lease payments he had collected from the commercial property. Star Bank alleged that from January 2005 to December 2005, Randy had collected \$39,000 in lease payments but had not forwarded any these payments to the Estate. Star Bank's motion also indicated that it needed to modify the Estate's Indiana inheritance tax return to reflect the payment of the joint bank account to Randy and to modify the Estate's tax returns to report the lease payments as estate income.

During the hearing, Commissioner Kilmer indicated that Star Bank could withdraw and amend its final accounting but did not grant any other relief that Star Bank sought. Also during the hearing, Commissioner Kilmer notified the parties that he had a possible conflict of interest, and he offered to recuse himself and set the matter on Judge Spencer's calendar upon the Heirs' request. The Heirs then requested that the matter be set before Judge Spencer.

On May 5, 2006, the trial court, with Judge Spencer presiding, held a hearing on the Heirs' objection to the personal representative fees and attorney fees. At the time of the hearing, Star Bank had not yet filed an amended final accounting. During the hearing, Cassidy testified he did not keep a chronology of time for work done on the Estate and that his \$20,600 fee was calculated based on it being five percent of the gross

estate. Cassidy testified that Austin was the one that instructed Cassidy to pay himself a five percent fee for his work as personal representative and that he relied on Austin regarding the fee calculation.

Cassidy testified that the commercial property vested in the Heirs at Dunn's death and that because the property was not going to be sold, there was no reason to delay the distribution of the property to the Heirs. Cassidy testified that in March 2005, he had requested Randy to turn over the rental income from the commercial property and that his only concern with obtaining the rents was to accurately complete the tax returns. He also testified that the issue with the rental income could have been avoided if the commercial property had been transferred to the Heirs after the claim period had passed.

Cassidy acknowledged that there were some problems with the final accounting, such as: (1) it did not indicate what the Heirs were going to receive; (2) it did not give any indication of how the commercial property was going to be distributed; (3) it did not list the stock that was distributed to the Heirs; and (4) the personal representative fees and attorney fees were not listed as a deduction on the inheritance tax return.

Star Bank also presented deposition testimony from Austin, who retired from the practice of law in December 2004. Austin acknowledged that he did not file a petition for the personal representative and attorney fees prior to them being paid. In regard to his \$20,600 attorney fee, Austin testified that he could not explain exactly how it was determined and that he only kept "cursory records." Transcript at 270. Austin testified that he did not make a specific computation of time spent working on the Estate and that he thought he charged a fee that was commensurate with his work. Austin stated that

factors in determining a fair fee included time spent and a percentage of the estate. He indicated that if it was fair, he would normally charge five percent of estate and that he had used the five percent calculation in the past. Austin also testified that there was no current probate fee schedule in Madison Circuit Court.

Star Bank also presented testimony from attorney James Anderson to support its contention that the personal representative and attorney fees were reasonable. When Star Bank asked the trial court to recognize Anderson's testimony as expert testimony, the Heirs objected based on Anderson's acknowledgment that he did not have any greater expertise in probate matters than Judge Spencer and argued that Anderson would not be able to provide any additional knowledge to the court. Judge Spencer overruled the Heirs' objection and allowed Anderson's testimony.

Anderson, who practiced probate law and was the probate commissioner in Madison Superior Court, testified that his opinion was that Austin's \$20,600 attorney fee was reasonable. Anderson also testified that his opinion was that Star Bank's \$20,600 personal representative fee was also reasonable. On cross-examination, Anderson indicated that in his own probate practice, he kept time sheets on any estate work done and that the combined administrative costs for both personal representative and attorney fees would fall between 5% and 7.5 %. He also indicated that the better practice was to do a fee petition for personal representative and attorney fees.

The Heirs also testified during the hearing. Each of them testified that they had decided to form the Heirs' LLC and to deposit the rental income from the commercial property into the Heirs' LLC account because they needed to protect themselves and let



the rental income go into a safe place until the disputes with the Estate were worked out. Randy and Michelle also testified that Cassidy told them during their October 2003 meeting that he would charge a flat fee of \$2,500 for Star Bank's role as personal representative of the Estate.

On September 6, 2006, the trial court entered its order regarding the Heirs' fee objection. The trial court found that based on the testimony and exhibits, a reasonable amount of fees for the personal representative was \$2,500 and a reasonable amount of fees for the personal representative's attorney was \$5,000. Because Star Bank had already paid itself as personal representative and paid Austin as its attorney, the trial court ordered Star Bank to reimburse \$18,100 to the Estate and directed the Austin's firm to reimburse \$15,600 to the Estate. The trial court also ordered Star Bank to immediately transfer the commercial property to the Heirs. The trial court further determined that the rental income collected by the Heirs' LLC should remain with the Heirs and that the Heirs should sign a release indemnifying the Estate from any taxes incurred by the Estate as a result of rental income for the commercial property. Finally, the trial court ordered Star Bank to file a modified accounting and modify any tax returns as appropriate. Star Bank now appeals.<sup>1</sup>

Star Bank argues that the trial court abused its discretion in its determination of fees for the Estate's personal representative and attorney. Indiana Code § 29-1-10-13

---

<sup>1</sup> Upon Star Bank's petition, we stayed the trial court's order pending resolution of this appeal.

governs compensation of a personal representative and attorney performing services for an estate and provides, in relevant part:

The personal representative . . . shall be allowed such compensation for his services *as the court shall deem just and reasonable* . . . An attorney performing services for the estate at the instance of the personal representative shall have such compensation therefor out of the estate *as the court shall deem just and reasonable*. Such compensation may be allowed at the final settlement; but at any time during administration a personal representative or his attorney *may apply to the court* for an allowance upon the compensation of the personal representative and upon attorney's fees.

Ind. Code § 29-1-10-13 (emphases added). The amount of fees to be awarded is within the trial court's discretion and will not be disturbed absent an abuse of discretion. *Ford v. Peoples Trust and Sav. Bank*, 651 N.E.2d 1193, 1194 (Ind. Ct. App. 1995), *trans. denied*. Additionally, we have recognized the trial court's particular expertise in determining the value of the services rendered.<sup>2</sup> *Id.*

When determining a "reasonable" fee, the trial court may consider many factors, including the labor performed, the nature of the estate, difficulties in recovering assets or locating devisees, and the peculiar qualifications of the administrator. *Id.* The quality of services may also be considered in a determination of reasonable fees. *Finley v. Finley*, 422 N.E.2d 289, 292 (Ind. Ct. App. 1981) (citing *Matter of Estate of Kingseed*, 413 N.E.2d 917 (Ind. Ct. App. 1980)). In addition, the trial court may consider the following guidelines for determining legal fees set out in Rule 1.5 of the Indiana Rules of Professional Conduct:

---

<sup>2</sup> We decline Star Bank's request to not recognize the expertise of the trial court in this matter. See Appellant's Brief at 22.

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

*Ford*, 651 N.E.2d at 1194.

Here, the trial court, on its own motion, ordered the parties to submit a proposed order and, thereafter, entered an order containing findings of fact. When a trial court enters findings on its own motion, the specific findings control only as to the issues they cover, and a general judgment standard applies to any issue upon which the court has not entered findings. *Id.* We will not set aside specific finding unless they are clearly erroneous, and we will affirm a general judgment on any theory supported by the evidence. *Id.* We consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom, and we will neither reweigh the evidence nor assess witness credibility. *Butler Univ. v. Estate of Verdak*, 815 N.E.2d 185, 190 (Ind. Ct. App. 2004).

Star Bank argues that when considering the factors for determining a reasonable fee, the factors listed in Professional Conduct Rule 1.5, and the evidence presented, that the personal representative and attorney fees “bear a reasonable relation to the amount of services actually provided, the time and work involved, and the reasonable value of those services.” Appellant’s Brief at 23.

First, when considering the general factors in determining fees, the record reveals that the Estate was a supervised estate, there were no notable difficulties in recovering assets of the Estate or locating the devisees, and there was no problem with qualifying Star Bank as the personal representative.

Additionally, in regard to the first guideline of Rule 1.5—the time spent and labor performed by Star Bank and Austin—both Cassidy and Austin testified that they did not keep track of the actual amount of time spent on work done on the Estate. They did, however, introduce a post-hoc summary sheet of tasks. Specifically, Cassidy introduced Petitioner’s Exhibit 4—a chronology of the tasks he completed during administration of the Estate—into evidence. Cassidy compiled this chronology in October 2005—more than one year after he had paid himself the \$20,600 personal representative fee. Cassidy testified that Austin, who determined that Star Bank’s fee should be five percent, did not see this chronology. Additionally, during his deposition, Austin presented a printout from the directory of his firm’s Word Perfect program, showing the list of documents compiled for Dunn’s Estate. This document, presented as Deposition Exhibit G, was compiled on the morning of Austin’s deposition—October 14, 2005. This exhibit does not indicate the amount of time that Austin spent on these documents.

In regard to the difficulty of the questions involved, the record indicates that no claims were made against the Estate, and no hearings were held regarding the administration of the Estate, with exception of the fee objection hearing. The Heirs agreed on a value for the shares of stock, agreed on a selling price for the residential property, and provided a buyer for the property. Randy sold both the vehicles. While there was a disagreement between Randy and Cassidy and Austin regarding whether the joint bank account was supposed to be distributed to Randy or whether it was a business account that was to be made part of the Estate, the record reveals that the bank signature card signed by Dunn and Randy when they opened the account in November 1988 shows that the ownership in the account was joint ownership. Finally, the commercial property, which was not sold and was to be divided among the Heirs, was managed by Randy, who collected the rents and dealt with the tenants. Star Bank suggests that the Heirs' decision to form the Heirs' LLC and deposit the rent from the commercial property was an "interference" that required additional time and labor on both the personal representative and the attorney and justified their respective \$20,600 fee. Appellant's Brief at 28. The record, however, reveals that the assets of the estate were readily identified and valued and that the administration of the estate did not require an extraordinary amount of work by either the personal representative or the attorney.

In regard to the second guideline of Rule 1.5—the likelihood that work on the Estate precluded other employment—the record does not reveal that Star Bank and Austin were precluded from taking other employment. Indeed, Austin testified that the Estate was not his only file. Furthermore, given the lack of claims and minimal amount

of time that the administration of the Estate required, this factor is not particularly relevant. *See Ford*, 651 N.E.2d at 1195.

In regard to the third guideline—the fee customarily charged in the locality—the Heirs introduced an exhibit showing a 1981 Madison Circuit Court fee schedule, which indicated that a personal representative fee should be fifty percent of the attorney fees allowed. *See Appellant's Appendix* at 362. Austin testified that there was no current probate fee schedule in Madison Circuit Court but that he thought the personal representative and attorney fees were close to those customarily charged.

Anderson, who practiced probate law and was a probate commissioner in Madison County, testified that his opinion was that the personal representative and attorney fees were reasonable. Star Bank suggests that the trial court erred by not adopting Anderson's testimony that the fees were reasonable. While testimony of other lawyers is admissible to aid the trial court in its determination of attorney fees and should not be arbitrarily disregarded, the trial court is not bound by such testimony. *See Matter of Estate of Meguschar*, 511 N.E.2d 307, 311 (Ind. Ct. App. 1987), *reh'g denied, trans. denied*. Moreover, we have recognized the trial court's particular expertise in determining the value of the services rendered. Furthermore, Anderson testified that in his own probate practice, the combined administrative costs for both personal representative and attorney fees would fall between 5% and 7.5 % and that he kept time sheets on any estate work done. Thus, Anderson's testimony that Austin's \$20,600 attorney fee and Star Bank's \$20,600 personal representative fee—which, when combined, equated to 10% of the gross estate—were reasonable is somewhat undercut by his testimony regarding his own

fees. Furthermore, Anderson stated that in forming his opinion regarding the personal representative fees, he did not review the personal representative's file but only looked at an itemized list of what the personal representative did. However, as explained above, this list was compiled more than one year after payment of the personal representative fee and was not seen by Austin, who determined that Star Bank's fee should be five percent.

Randy and Michelle also testified that Cassidy told them during their October 2003 meeting that he would charge a flat fee of \$2,500 for Star Bank's role as personal representative of the Estate. Cassidy testified that he had told the Heirs that there would not be a \$2,500 minimum fee and that it would be based on the assets gathered and administered. It is clear that the trial court gave more weight to Randy and Michelle's testimony, and we will not reweigh the evidence or assess witness credibility. *See Butler Univ.*, 815 N.E.2d at 190.

Fourth—regarding the amount involved—the final accounting estimated the gross value of the Estate for inheritance tax purposes was \$413,306. The combined personal representative and attorney fees equated to ten percent of the gross estate, and both Cassidy and Austin's testimony indicates that their fees were calculated based on the respective fee being five percent of the gross estate. "However, a reasonable fee cannot be determined solely by the application of a percentage formula to the value of the gross estate." *Ford*, 651 N.E.2d at 1195.

In regard to the results obtained, Cassidy acknowledged that there were some problems with the final accounting, such as: (1) it did not indicate what the Heirs were going to receive; (2) it did not give any indication of how the commercial property was

going to be distributed; (3) it did not list the stock was that distributed to the Heirs; and (4) the personal representative fees and attorney fees were not listed as a deduction on the inheritance tax return. Additionally, it appears that the disagreement regarding the joint bank account resulted in work, and certainly in a hearing on the matter, that may have been otherwise avoided.

Fifth—regarding the time limitations imposed by the clients or circumstances—the record does not reveal that the Heirs placed any specific time limitations on either the personal representative or the attorney. Star Bank and Austin did testify that there was disagreement and contention among the Heirs and seemed to suggest that this disagreement caused them to spend more time on the Estate. However, when Randy and Michelle testified, they denied there was any substantial family dispute that would have affected the administration of the Estate. We note that we will neither reweigh the evidence nor assess witness credibility, *see Butler Univ.*, 815 N.E.2d at 190, and further note that there is evidence that the Heirs made agreements regarding the sale of Dunn’s residence and car and regarding the collection of rental income from the commercial property. Thus, this factor does not weigh heavily in our analysis.

Sixth—as to the nature and length of the relationship with the client—the evidence is undisputed that Austin had a longstanding business relationship with Dunn and had done legal work for Dunn’s parents. However, Austin testified that he was paid for all his previous work that he completed for Dunn and that the \$20,600 attorney fee he received did not include any unpaid fees. The evidence also showed that Dunn had a bank account with Star Bank since at least 1988 when he opened the joint account with



Randy; however, there is no evidence that the \$20,600 personal representative fee included some sort of unpaid fee for this banking relationship. Also, there is no evidence that Dunn had any prior business experience with Cassidy.

Seventh—regarding the experience, reputation, and ability of the lawyer—the evidence reveals that Austin had practiced probate law in Madison County from 1942 until he retired in December 2004 and that he had an admirable reputation in the legal community. Despite Austin’s experience and reputation, the record reveals that there were some deficiencies in the final accounting and that the statutory procedure for court-approved payment of personal representative and attorney fees was not followed. The evidence also reveals that Star Bank has served as a personal representative in other estates over the years but that this was the first estate in which Cassidy served as a personal representative for the bank.<sup>3</sup>

Considering all the factors related to reasonableness and the evidence presented to the trial court, including the evidence that Austin and Star Bank could not account for the time they spent working on the Estate and merely calculated their fees based on a percentage of the gross estate, we cannot say that the trial court abused its discretion by finding the \$20,600 personal representative and attorney fees to be unreasonable and by determining that these fees needed to be reduced.

## II.

---

<sup>3</sup> We will not address the eighth factor from Professional Conduct Rule 1.5 because the personal representative and attorney fees were neither fixed nor contingent.

Star Bank also argues that the trial court erred by allowing the Heirs to keep the rental income collected from the commercial property for the period prior to the trial court's order to distribute the commercial property to the Heirs.

On January 1, 2005, the Heirs formed the Heirs' LLC and started to deposit the monthly rental income from the commercial property into the LLC's bank account because they were concerned about the personal representative and attorney fees that had been paid and felt that they needed to protect themselves and let the rental income go into a safe place until the disputes with the Estate were worked out. Cassidy testified that the commercial property vested in the Heirs at Dunn's death and that because the property was not going to be sold, there was no reason to delay the distribution of the property to the Heirs. Cassidy testified that his only concern with obtaining the rents was to accurately complete the tax returns. He also testified that the issue with the rental income could have been avoided if the commercial property had been transferred to the Heirs after the claim period had passed. Following the hearing on the Heirs' objection to the personal representative and attorney fees, the trial court ordered Star Bank to immediately transfer the commercial property to the Heirs. The trial court also determined that the rental income collected by the Heirs' LLC should remain with the Heirs and that the Heirs should sign a release indemnifying the Estate from any taxes incurred by the Estate as a result of rental income for the commercial property.

Star Bank does not challenge the trial court's order to distribute the commercial property to the Heirs but argues that the trial court's order allowing the Heirs to keep the commercial property rental income for the period prior to the trial court's order to

distribute the commercial property to the Heirs was erroneous because it condoned the Heirs' act of diverting the rental income from the Estate and their interference with Star Bank's statutory duties as personal representative of the Estate under Indiana Code § 29-1-13-1 and Indiana Code § 29-1-17-7. Star Bank contends that the Heirs should be required to return all the rental income collected since January 2005 so that Star Bank can complete the administration of the Estate and thereafter distribute it to the Heirs.

The Heirs contend that the trial court's order allowing the Heirs to keep the rental income is "equitable and just" given the length of time the Estate has remained open and that at the very least the order constitutes harmless error and should be affirmed. Appellee's Brief at 36. We agree with Star Bank that the rental income collected before the date of the court-ordered distribution of the property belonged to the corpus of the Estate, but we also agree with the Heirs that the trial court's order does not require reversal.

At the time of the trial court's order, Indiana Code § 29-1-13-1 provided,<sup>4</sup> in part, that:

Every personal representative shall have a right to, and shall take, possession of all the real and personal property of the decedent . . . *He shall pay the taxes and collect the rents and earnings thereon* until the estate is settled or *until delivered by order of the court to the distributees* . . . .

(Emphases added). Indiana Code § 29-1-17-7 provides:

Unless the decedent's will provides otherwise, all income received by the personal representative during the administration of the estate shall

---

<sup>4</sup> This statute was subsequently amended in 2007. See P.L.95-2007, SEC.10. The amended statute did not change the substantive content of the statute.

constitute an asset of the estate the same as any other asset and the personal representative shall disburse, distribute, account for and administer said income as a part of the corpus of the estate.

In *Kingseed*, the children of a decedent collected rents from the decedent's farm for approximately one year prior to the date they received the farm under a partial distribution. The trial court ordered the children to return that year of farm rental income to the estate. The children appealed the trial court's order requiring them to return the farm rent. On appeal, we explained that under the common law, "rents and profits from real estate accruing before the decedent's death passed to the personal representative and those accruing afterwards to the heirs or devisees" but that Indiana Code § 29-1-13-1 "created a duty in the personal representative to take possession [of the decedent's real property and rents] until the court delivered possession to the devisees under an order for distribution." 413 N.E.2d at 924-25. We noted that "one of the principal effects of enlarging the personal representative's powers over the real estate is to prevent the heir or devisee from recovering possession or collecting rents from third parties until the court delivers possession under an order for distribution." *Id.* at 925 (internal quotes and citation omitted). Accordingly, we held that the income collected by the children before the court-approved date of distribution properly belonged to the corpus of the estate. *Id.*

Therefore, under the analysis of *Kingseed*, the commercial property rental income collected and retained by the Heirs prior to the date the trial court distributed the commercial property to them belonged to the Estate. However, there is no need for us to remand and have the trial court order the Heirs to return the commercial rents for the period prior to date of distribution of the property because Indiana Code § 29-1-13-1

provides that the rents are retained by the personal representative “until delivered by order of the court to the distributees[.]” Furthermore, Indiana Code § 29-1-17-1 allows a trial court to order a partial distribution of an estate in varying circumstances. *See Montgomery v. Estate of Montgomery*, 677 N.E.2d 571, 574 (Ind. Ct. App. 1997). Generally, subsection (a) allows a trial court, at any during the administration and under certain circumstances, to order a personal representative to deliver to any distributee, who consents to it, possession of property to which he is entitled under the will, and subsection (c) provides for a partial distribution after the expiration of time for filing claims.<sup>5</sup> *See* Ind. Code § 29-1-17-1. Furthermore, it is a well-established policy of the law that estates shall be settled as speedily as possible. *See Kingseed*, 413 N.E.2d at 923. Therefore, we affirm the trial court’s order regarding the rental income.

---

<sup>5</sup> Indiana Code § 29-1-17-1 provides, in part:

(a) At any time during the administration, upon application of the personal representative or any distributee, with or without notice as the court may direct, the court may order the personal representative to deliver to any distributee, who consents to it, possession of any specific real or tangible personal property to which he is entitled under the terms of the will or by intestacy, provided that other distributees and claimants are not prejudiced thereby. The court may at any time prior to the decree of final distribution order him to return such property to the personal representative if it is for the best interest of the estate. The court may require the distributee to give security for such return.

\* \* \* \* \*

(c) After the expiration of the time limited for the filing of claims and before final settlement of the accounts of the personal representative, a partial distribution may be decreed, with notice to interested persons as the court may direct. Such distribution shall be as conclusive as a decree of final distribution, except that the court may, as provided in section 2(b) of this chapter, modify such decree of partial distribution to the extent necessary to protect the other distributees and claimants, and assure them that they will receive the amount due them on final distribution. Before a partial distribution is so decreed, the court may require that security be given for the return of the property so distributed to the extent necessary to satisfy any distributees and claimants who may be prejudiced as aforesaid by the partial distribution.

Affirmed.

BAKER, C.J., and NAJAM, J., concur.